

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

BENNY SALERNO,

Defendant.

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NO. 10-CR-301

JUDGE CAPUTO

FILED ELECTRONICALLY

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO PRESERVE
AND PRODUCE NOTES, REPORTS AND EVIDENCE**

Pursuant to Local Rule 7.5, Defendant Benny Salerno (“Mr. Salerno”), by and through his undersigned counsel, hereby submits this memorandum of law in support of his motion to preserve and produce notes, reports and evidence. For the reasons stated herein, Mr. Salerno respectfully requests that this Court order that the notes of all investigating officers, agents and prosecutors, all preliminary drafts of reports, including floppy disks, computer-generated data and repositories of such notes and preliminary drafts, all videotapes, dispatch tapes or any other physical evidence, be preserved and produced to the defense.

I. PROCEDURAL HISTORY OF THE CASE AND STATEMENT OF FACTS

On October 19, 2010, the prosecutors obtained a three count indictment against Mr. Salerno, charging him with violations of 18 U.S.C. § 1035 (Count 1), 18 U.S.C. § 1347 (Count 2), 21 U.S.C. § 331(k), 352(a), and 333(a)(2) (Count 3) for an unspecified number of counts that allegedly occurred over five years from January 1, 2001 through March 3, 2006.¹ This Court ordered that all pretrial motions be filed on or before April 14, 2011.

II. STATEMENT OF THE QUESTION INVOLVED

Whether the Court should grant Defendant's Motion and order the government to produce the materials requested within thirty (30) days?

III. ARGUMENT

Mr. Salerno requests this Court instruct the attorneys for the United States and each and every investigative agency working in connection with this case to preserve and produce all field notes, memoranda, or other recordings of fact and other information gathered during the investigation of the incidents which

¹The Indictment also contains a forfeiture allegation. (Ind. ¶¶ 22-24).

lead to the indictment in this matter, and to prevent the same from being destroyed so that such recordings and evidence will be available to Mr. Salerno's counsel for the purposes of cross examination and to ensure the preservation of Mr. Salerno's right to effective assistance of counsel under the Sixth Amendment of the United States Constitution. The preservation of rough notes is specifically requested and the government is required to take steps to preserve notes, whether or not the government deems them discoverable at this time. See, United States v. Ramos, 27 F.3d 65 (3d Cir. 1995); United States v. Harris, 543 F.2d 1247, 1251-53 (9th Cir. 1976); United States v. Harrison, 524 F.2d 421, 431-32 (D.C. Cir. 1975).

The preservation of notes is particularly important in this case because the government has charged Mr. Salerno with committing an unspecified number of offenses over a five-year span. Such notes will be important for cross-examination purposes because: (1) many of the alleged events probably fall outside of the applicable statute of limitations, and (2) the duplicitous nature of the Indictment poses challenges to Mr. Salerno's double jeopardy protections.

IV. CONCLUSION

For the reasons set forth herein, Mr. Salerno respectfully requests that his Motion be granted.

Respectfully submitted,

/s/ Jason Asbell
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Attorneys for Defendant,
Benny Salerno

Date: April 14, 2011

CERTIFICATE OF SERVICE

I, Jason Asbell, hereby certify that a true and correct copy of the foregoing Memorandum of Law in Support of Motion to Preserve and Produce Notes, Reports and Evidence was served upon the following counsel of record via the electronic case filing system, on this 14th day of April, 2011:

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/s/ Jason Asbell
Jason Asbell